

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jun 07, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MELISSA B.<sup>1</sup>,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY ADMINISTRATION,  
Defendant.

No. 4:21-CV-05083-SAB

**ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT;  
DENYING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT**

Before the Court are Cross-Motions for Summary Judgment. ECF Nos. 15, 16. The motions were heard without oral argument. Plaintiff is represented by Chad L. Hatfield; Defendant is represented by Frederick Fripps and Timothy M. Durkin.

Plaintiff brings this action seeking judicial review of the Commissioner of Social Security's final decision denying her application for Supplemental Security Income (SSI) under Title XVI of the Social Security Act, 42 U.S.C. §§ 1382. After reviewing the administrative record and briefs filed by the parties, the Court is now

<sup>1</sup> Pursuant to the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States, Plaintiff's name is partially redacted.

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT; DENYING DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT ~ 1**

1 fully informed. For the reasons set forth below, the Court grants Plaintiff's Motion  
2 for Summary Judgment, ECF No. 15, and denies Defendant's Motion for Summary  
3 Judgment, ECF No. 16.

#### 4 **I. Jurisdiction**

5 On February 3, 2016, Plaintiff filed an application for supplemental security  
6 income. Plaintiff's application was denied initially and on reconsideration.<sup>2</sup> On  
7 October 22, 2020, Plaintiff appeared and testified by telephone before ALJ Stewart  
8 Stallings, with the assistance of her counsel, Chad Hatfield. Carrie Guthrie-  
9 Whitlow, vocational expert, also participated. The ALJ issued a decision on  
10 November 16, 2020, finding Plaintiff was not disabled.

11 Plaintiff requested review by the Appeals Council; the Appeals Council  
12 denied the request on March 25, 2021. The Appeals Council's denial of review  
13 makes the ALJ's decision the "final decision" of the Commissioner of Social  
14 Security, which this Court is permitted to review. 42 U.S.C. § 405(g),  
15 1383(c)(1)(3).

16 Plaintiff filed a timely appeal with the United States District Court for the  
17 Eastern District of Washington on May 28, 2021. ECF No. 1. The matter is before  
18 this Court pursuant to 42 U.S.C. § 405(g).

#### 19 **II. Five-Step Sequential Evaluation Process**

20 The Social Security Act defines disability as the "inability to engage in any  
21 substantial gainful activity by reason of any medically determinable physical or  
22 mental impairment which can be expected to result in death or which has lasted or  
23 can be expected to last for a continuous period of not less than twelve months." 42  
24 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be

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25  
26 <sup>2</sup> On March 21, 2019, a hearing was held before an ALJ, who issued an  
27 unfavorable decision on June 17, 2019. On June 16, 2020, the Appeals Council  
28 remanded the case for further proceedings.

1 under a disability only if their impairments are of such severity that the claimant is  
2 not only unable to do their previous work, but cannot, considering claimant's age,  
3 education, and work experiences, engage in any other substantial gainful work that  
4 exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B). The  
5 Commissioner has established a five-step sequential evaluation process to  
6 determine whether a person is disabled in the statute. See 20 C.F.R. §§  
7 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v).

8 **Step One:** Is the claimant engaged in substantial gainful activities? 20  
9 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). Substantial gainful activity is work  
10 done for pay and requires compensation above the statutory minimum. *Keyes v.*  
11 *Sullivan*, 894 F.2d 1053, 1057 (9th Cir. 1990). If the claimant is engaged in  
12 substantial activity, benefits are denied. 20 C.F.R. § 404.1520(b), 416.920(b). If  
13 the claimant is not, the ALJ proceeds to step two.

14 **Step Two:** Does the claimant have a medically-severe impairment or  
15 combination of impairments? 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). A  
16 severe impairment is one that lasted or must be expected to last for at least 12  
17 months and must be proven through objective medical evidence. *Id.* §§ 404.1509,  
18 416.909. If the claimant does not have a severe impairment or combination of  
19 impairments, the disability claim is denied. *Id.* § 404.1520(a)(4)(ii),  
20 416.920(a)(4)(ii). If the impairment is severe, the evaluation proceeds to the third  
21 step.

22 **Step Three:** Does the claimant's impairment meet or equal one of the listed  
23 impairments acknowledged by the Commissioner to be so severe as to preclude  
24 substantial gainful activity? 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If  
25 the impairment meets or equals one of the listed impairments, the claimant is  
26 conclusively presumed to be disabled. 20 C.F.R. §§ 404.1520(d), 416.920(d). If the  
27 impairment is not one conclusively presumed to be disabling, the evaluation  
28 proceeds to the fourth step.

1 Before considering to the fourth step, the ALJ must first determine the  
2 claimant's residual functional capacity. An individual's residual functional  
3 capacity is their ability to do physical and mental work activities on a sustained  
4 basis despite limitations from their impairments. 20 C.F.R. §§ 404.1545(a)(1),  
5 416.945(a)(1). The residual functional capacity is relevant to both the fourth and  
6 fifth steps of the analysis.

7 **Step Four:** Does the impairment prevent the claimant from performing work  
8 they have performed in the past? 20 C.F.R. §§ 404.1520(a)(4)(iv),  
9 416.920(a)(4)(iv). If the claimant is able to perform their previous work, they are  
10 not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f). If the claimant cannot perform  
11 this work, the evaluation proceeds to the fifth and final step.

12 **Step Five:** Is the claimant able to perform other work in the national  
13 economy in view of their age, education, and work experience? 20 C.F.R. §§  
14 404.1520(a)(4)(v), 416.920(a)(4)(v). The initial burden of proof rests upon the  
15 claimant to establish a prima facie case of entitlement to disability benefits. *Tackett*  
16 *v. Apfel*, 108 F.3d 1094, 1098 (9th Cir. 1999). This burden is met once a claimant  
17 establishes that a physical or mental impairment prevents him from engaging in her  
18 previous occupation. *Id.* At step five, the burden shifts to the Commissioner to  
19 show that the claimant can perform other substantial gainful activity. *Id.*

### 20 **III. Standard of Review**

21 The Commissioner's determination will be set aside only when the ALJ's  
22 findings are based on legal error or are not supported by substantial evidence in the  
23 record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992) (citing  
24 42 U.S.C. § 405(g)). Substantial evidence is "more than a mere scintilla,"  
25 *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance,"  
26 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). Substantial  
27 evidence is "such relevant evidence as a reasonable mind might accept as adequate  
28 to support a conclusion." *Richardson*, 402 U.S. at 401.

1 A decision supported by substantial evidence will be set aside if the proper  
2 legal standards were not applied in weighing the evidence and making the decision.  
3 *Browner v. Sec'y of Health & Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988).  
4 An ALJ is allowed “inconsequential” errors as long as they are immaterial to the  
5 ultimate nondisability determination. *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d  
6 1050, 1055 (9th Cir. 2006). The Court must uphold the ALJ’s denial of benefits if  
7 the evidence is susceptible to more than one rational interpretation, one of which  
8 supports the decision of the administrative law judge. *Batson v. Barnhart*, 359 F.3d  
9 1190, 1193 (9th Cir. 2004). It “must consider the entire record as a whole,  
10 weighing both the evidence that supports and the evidence that detracts from the  
11 Commissioner’s conclusion, and may not affirm simply by isolating a specific  
12 quantum of supporting evidence.” *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir.  
13 2017) (quotation omitted). “If the evidence can support either outcome, the court  
14 may not substitute its judgment for that of the ALJ.” *Matney*, 981 F.2d at 1019.

#### 15 **IV. Statement of Facts**

16 The facts have been presented in the administrative record, the ALJ’s  
17 decision, and the briefs to this Court. Only the most relevant facts are summarized  
18 herein.

19 Plaintiff turned 50 in November 2019. She has her GED. In 2010, Plaintiff  
20 qualified for SSI. She went to prison for drug charges and lost her benefits.

21 At the hearing before the ALJ, Plaintiff explained that her carpal tunnel in  
22 her right hand makes it hard for her to hold a pencil. Her elbow all the way down  
23 to her hand gets numb. She stated she cannot use a computer because it causes  
24 tingling and her hand goes numb immediately. She explained that she can only  
25 wash a couple of dishes at a time and her daughter comes over almost every day  
26 and helps her with everything, including the housework and grocery shopping. She  
27 testified that her knees have gotten worse, and it is difficult to walk very far. She  
28 testified that she needs to elevate her legs three or four times a day for 20-30

1 minutes at a time. She also testified that she has issues with depression, anger,  
2 asthma, and COPD. She testified that she lays in her bed two or three days a week,  
3 unable to shower or get dressed.

4 She testified that she used marijuana two or three times in the last six or  
5 seven months. She doesn't use it that often, but she was stressed out. She also  
6 explained that it helped with the pain in her knees and hands.

7 A review of Plaintiff's testimony in the prior hearings reveal that Plaintiff  
8 has suffered significant physical and sexual abuse, including childhood molestation  
9 and rape. As a result, she has a hard time trusting others and has a hard time talking  
10 about her trauma with counselors.

#### 11 **V. The ALJ's Findings**

12 The ALJ issued an opinion affirming denial of benefits. AR 17-28. At step  
13 one, the ALJ found that Plaintiff has not engaged in substantial gainful activity  
14 since February 3, 2016, the application date. AR 17.

15 At step two, the ALJ identified the following severe impairments: major  
16 depressive disorder in partial remission; bipolar disorder; PTSD; generalized  
17 anxiety disorder; unspecified personality disorder with mixed features; lumbar  
18 degenerative disc disease; hypothyroidism; obesity (same as vacated ALJ  
19 decision); and methamphetamine abuse; bilateral carpal tunnel; left knee arthritis;  
20 right ulnar neuropathy. AR 20.

21 At step three, the ALJ found that Plaintiff did not have an impairment or  
22 combination of impairments that meets or medically equals the severity of one of  
23 the listed impairments. AR 20. Ultimately, the ALJ concluded that Plaintiff has a  
24 residual function capacity ("RFC") to perform:

25 light work as defined in 20 CFR 416.967(b) with the following  
26 limitations. She can lift up to 20 pounds occasionally and lift and/or  
27 carry up to 10 pounds frequently, stand or walk about six hours in an  
28 eight-hour workday and sit about six hours in an eight-hour workday  
with normal breaks. She would need a sit/stand option, defined as  
change from a standing position to a sitting position, or vice-versa,



approximately every 30 minutes for about five minutes while remaining at the workstation. Sit/stand at will is acceptable. No foot control operations. No ladders, ropes or scaffolds; occasional ramps and stairs; occasional stooping; rare (defined as no more than 15% of the time) crouching, kneeling and crawling. Frequent handling and fingering bilaterally. No exposure to irritants such as fumes, odors, dusts, gases, poorly ventilated areas and chemicals, specifically in the industrial setting not just walking outside on a bad day or being around household cleaners. No moving or dangerous machinery or unprotected heights. Simple, routine and repetitive work, no production pace conveyor belt type-work. Occasional simple workplaces changes and a predictable environment. No more than occasional interaction with the public, supervisors and coworkers.

AR 22.

At step four, the ALJ found that Plaintiff had no past relevant work. AR 27.

At step five, the ALJ found that Plaintiff was not disabled and capable of performing work that exists in significant numbers in the national economy, such as assembler, small parts; inspector and hand packager; and nut and bolt assembler.

AR 28.

## **VI. Issues for Review**

1. Whether the ALJ properly evaluated the medical opinion evidence?
2. Whether the ALJ properly evaluated Plaintiff's symptom testimony?
3. Whether the ALJ properly conducted an adequate analysis at Step Five?

## **VII. Discussion**

### **1. The ALJ's evaluation of the medical opinion evidence**

Plaintiff argues the ALJ erred in evaluating the medical opinions of Dr. Morgan, Dr. Genthe, and Dr. Jenkins-Guarnieri.

The medical opinion of a claimant's treating physician is given "controlling weight" as long as it "is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [the claimant's] case record." 20 C.F.R. § 404.1527(c)(2); *Trevizo v. Berryhill*, 871 F.3d 664, 675 (9th Cir. 2017). When a treating physician's opinion

1 is not controlling, it is weighted according to factors such as the length of the  
2 treatment relationship and the frequency of examination, the nature and extent of  
3 the treatment relationship, supportability, consistency with the record, and  
4 specialization of the physician. § 404.1527(c)(2)-(6). “If a treating or examining  
5 doctor’s opinion is contradicted by another doctor’s opinion, an ALJ may only  
6 reject it by providing specific and legitimate reasons that are supported by  
7 substantial evidence. *Trevizo*, 871 F.3d at 675 (quoting *Ryan v. Comm’r of Soc.*  
8 *Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008)). “[A]n ALJ errs when he rejects a  
9 medical opinion or assigns it little weight while doing nothing more than ignoring  
10 it, asserting without explanation that another medical opinion is more persuasive,  
11 or criticizing it with boilerplate language that fails to offer a substantive basis for  
12 his conclusion.” *Garrison v. Colvin*, 759 F.3d 995, 1012–13 (9th Cir. 2014) (citing  
13 *Nguyen v. Chater*, 100 F.3d 1462, 1464 (9th Cir. 1996)).

14 **A. Dr. David T. Morgan**

15 On July 23, 2020, Dr. David T. Morgan, Ph.D completed a psychological  
16 evaluation of Plaintiff. Dr. Morgan noted that Plaintiff had bipolar disorder and  
17 PTSD with moderate to marked severity. AR 775. He found that Plaintiff had  
18 *Marked* severity in the following areas: Perform activities within a schedule,  
19 maintain regular attendance, and be punctual with customary tolerances without  
20 special supervision; Adapt to changes in a routine work setting; Communicate and  
21 perform effectively in a work setting; Maintain appropriate behavior in a work  
22 setting; and Complete a normal work day and work week without interruptions  
23 from psychologically based symptoms. *Id.* He found that Plaintiff had Moderate  
24 severity in the following areas: Understand, remember, and persist in tasks by  
25 following detained instructions; Learn new tasks; Perform routine tasks without  
26 special supervision; Make simple work-related decisions; Be aware of normal  
27 hazards and take appropriate precautions; Ask simple questions and request  
28 assistance; and Set realistic goals and plan independently. *Id.*



1 The ALJ gave little weight to the marked limitations by Dr. Morgan because  
2 the mental status examination was unremarkable, and because Plaintiff was not  
3 truthful about her substance abuse. The ALJ's evaluation of Dr. Morgan's opinion  
4 is not supported by substantial evidence in the record. Notably, it is this Court's  
5 understanding that the phrase "in recovery" does not necessarily indicate complete  
6 abstinence. Rather, it is this Court's understanding that relapses can be part of the  
7 recovery process. Also, Dr. Morgan noted that Plaintiff's bipolar disorder would  
8 cause depression including depressed mood, anhedonia, too much sleep, fatigue,  
9 agitation, feelings of worthlessness and poor concentration and that it would also  
10 cause mania, including elevated mood, increased energy, limited sleeping,  
11 pressured speech, flight of ideas, distractibility, increased activities. These  
12 symptoms support his findings of marked severity in those specific areas identified  
13 in his report. As such, the ALJ failed to provide specific and legitimate reasons for  
14 rejecting Dr. Morgan's opinion. On the contrary, Dr. Morgan's opinion is amply  
15 supported by the longitudinal record.

16 **B. Dr. Thomas Genthe**

17 On August 3, 2016, Dr. Thomas Genthe, Ph.D completed a psychological  
18 evaluation of Plaintiff. Dr. Genthe noted that Plaintiff had major depressive  
19 disorder with anxious distress and "Other Specified Personality Disorder (with  
20 mixed features)." AR 599. He found that Plaintiff had *Marked* severity in the  
21 following areas: Understand, remember, and persist in tasks by following detailed  
22 instructions; Adapt to changes in a routine work setting; Ask simple questions or  
23 request assistance; and Complete a normal work day and work week without  
24 interruptions from psychologically based symptoms. AR 600. He found Plaintiff  
25 had *Moderate* severity in the following areas: Understand, remember, and persist  
26 in tasks by following very short and simple instructions; Perform activities within a  
27 schedule, maintain regular attendance and be punctual within customary tolerances  
28 without special supervision; Learn new tasks; Perform routine tasks without

1 special supervision; Communicate and perform effectively in a work setting;  
2 Maintain appropriate behavior in a work setting; and Set realistic goals and plan  
3 independently. He noted that the duration would be nine months.

4 Dr. Genthe noted that Plaintiff presented with a history of problematic  
5 personality traits, which can limit treatment interventions of mental health  
6 symptoms. He concluded that at that time, Plaintiff was unlikely to function  
7 adequately in a work setting until her psychological symptoms could be managed  
8 more effectively. He was hoping that given her response to treatment and her  
9 willing participation that she may be able to resume fulltime work related activities  
10 in nine months.

11 The ALJ gave no significant weight to the opinions of Dr. Genthe because it  
12 appeared to the ALJ that Dr. Genthe conducted only a cursory evaluation and his  
13 opinion was unsupported by the mental health examination that he conducted,  
14 which the ALJ concluded was unremarkable. The ALJ also suggested that Dr.  
15 Genthe may have ignored the PAI findings suggesting that Plaintiff may not have  
16 answered questions in a completely forthright manner. The ALJ also noted that Dr.  
17 Genthe indicated that Plaintiff's limitations were only expected to last nine  
18 months.

19 The ALJ's conclusions regarding Dr. Genthe's opinion are not supported by  
20 the record, and therefore are not legitimate. Dr. Genthe conducted a Personality  
21 Assessment Inventory and he provided a detailed interpretive summary of the  
22 results that support his conclusions. Notably, the longitudinal record supports Dr.  
23 Genthe's conclusions regarding Plaintiff's mental health impairments.

#### 24 **C. Dr. Michael Jenkins-Guarnieri**

25 On July 27, 2020, Michael Jenkins-Guarnieri, Ph.D, reviewed Drs. Marks  
26 and Morgan's records and, relying on the functional limitations associated with the  
27 diagnosed conditions, he concluded that Plaintiff may be able to achieve the ability  
28

1 to work after regular and full engagement in comprehensive mental health  
2 treatment for 10-14 months. AR 782-783.

3 The ALJ gave no significant weight to Dr. Jenkins-Guarnieri's opinion  
4 because he only reviewed Dr. Morgan and Dr. Marks' reports and because he  
5 adopted the functional limitations of Dr. Morgan's reports despite Dr. Morgan  
6 noting that future psychological evaluations should be considered.

7 The ALJ's consideration of Dr. Jenkins-Guarnieri's opinion is not supported  
8 by substantial evidence because, as set forth above, Dr. Morgan's opinion is  
9 entitled to greater weight than the ALJ gave it. In addition, Dr. Jenkins-Guarnieri's  
10 opinion is supported by the longitudinal record.

## 11 **2. The ALJ's evaluation of Plaintiff's symptom testimony**

12 Plaintiff argues the ALJ improperly discredited her testimony. The ALJ  
13 found that Plaintiff's pain complaints are disproportionate to the objective medica  
14 findings. It concluded that the minimal and mild physical examination findings  
15 found throughout the record were inconsistent with Plaintiff's allegation of  
16 disabling pain. Additionally, the ALJ found that the objective medical evidence did  
17 not fully support the limitations that Plaintiff claimed were caused by her mental  
18 impairments.

19 In determining whether a claimant's testimony regarding subjective pain or  
20 symptoms is credible, the ALJ engages in a two-step analysis. *Garrison v. Colvin*  
21 759 F.3d 995, 1014 (9th Cir. 2014). "First, the ALJ must determine whether the  
22 claimant has presented objective medical evidence of an underlying impairment  
23 which could reasonably be expected to produce the pain or other symptoms  
24 alleged." *Id.* (citation and quotation omitted). If the claimant satisfies the first step  
25 of the analysis, and there is no evidence of malingering, the ALJ can reject the  
26 claimant's testimony about the severity of their symptoms "only by offering  
27 specific, clear and convincing reasons for doing so." *Id.* (citation and quotation  
28 omitted). "This is not an easy requirement to meet: The clear and convincing

1 standard is the most demanding required in Social Security cases.” *Id.* (citation and  
2 quotation omitted). That said, if the ALJ’s credibility finding is supported by  
3 substantial evidence in the record, the reviewing court “may not engage in second-  
4 guessing.” *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002).

5 In recognition of the fact that an individual’s symptoms can sometimes  
6 suggest a greater level of severity of impairment than can be shown by the  
7 objective medical evidence alone, 20 C.F.R. §§ 404.1529(c) and 416.929(c)  
8 describe the kinds of evidence, including the factors below, that the ALJ must  
9 consider in addition to the objective medical evidence when assessing the  
10 credibility of an individual’s statements:

11 1. Daily activities; 2. The location, duration, frequency, and intensity of  
12 pain or other symptoms; 3. Factors that precipitate and aggravate the  
13 symptoms; 4. The type, dosage, effectiveness, and side effects of any  
14 medication an individual takes or has taken to alleviate pain or other  
15 symptoms; 5. Treatment, other than medication, an individual receives or  
16 has received for relief of pain or other symptoms; 6. Any measures other  
17 than treatment an individual uses or has used to relieve pain or other  
18 symptoms (e.g., lying flat on his or her back, standing for 15 to 20  
19 minutes every hour, or sleeping on a board); and 7. Any other factors  
20 concerning an individual’s functional limitations and restrictions due to  
21 pain or other symptoms.

22 SSR 16-3P, 2017 WL 5180304. Daily activities may be grounds for an adverse  
23 credibility finding if (1) Plaintiff’s activities contradict her other testimony, or (2)  
24 Plaintiff “is able to spend a substantial part of [her] day engaged in pursuits  
25 involving the performance of physical functions that are transferable to a work  
26 setting.” *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (citing *Fair v. Bowen*,  
27 885 F.2d 597, 603 (9th Cir. 1989)).

28 The ALJ’s credibility assessment is not supported by substantial evidence in  
the record. Rather, it appears its negative credibility findings are based on a  
selective review of the evidence. The medical records note that Plaintiff has  
experienced pain, numbness and tingling in her elbow down to her fingers in her

1 right arm. Also, the record is replete with instances where Plaintiff had swelling in  
2 her legs. The fact that no medical provider recommended that she elevate her legs  
3 during the day is of no consequence. Additionally, the longitudinal record supports  
4 her testimony regarding her mental health limitations.

5 Plaintiff argues the ALJ improperly discredited her testimony that she was  
6 unable to lift more than 10 pounds and crediting this testimony results in a finding  
7 that she is disabled pursuant to Medical-Vocational Rule 201.12. The Court agrees.  
8 Given Plaintiff's inability to lift more than 10 pounds, she would be limited to  
9 sedentary work<sup>3</sup> and should be considered disabled pursuant to Medical-  
10 Vocational Rule 201.12.

### 11 3. Step Five Analysis

12 Plaintiff argues that the hypothetical posed by the ALJ to the vocational  
13 expert was incomplete because the ALJ erred by failing to include the following  
14 limitations: occasional handling/fingering with the right dominant upper extremity,  
15 absent more than one day per month, off task more than 10% of the time, the need  
16 to elevate her legs outside of regularly scheduled breaks and engaging in verbal  
17 arguments with coworkers/supervisors.

18 The Court agrees that the ALJ erred in failing to include the above-listed  
19 limitations, as these are supported by substantial evidence in the record. When  
20 these limitations were presented to the Vocational Expert, the VE testified that  
21 these limitations would preclude competitive employment.

22 \_\_\_\_\_  
23 <sup>3</sup> 20 C.F.R. § 416.967 defines sedentary work that involves lifting no more than 10  
24 pounds at a time and occasionally lifting or carrying articles like docket files,  
25 ledgers, and small tools. Although a sedentary job is defined as one which involves  
26 sitting, a certain amount of walking and standing is often necessary in carrying out  
27 job duties. Jobs are sedentary if walking and standing are required occasionally and  
28 other sedentary criteria are met.

**VII. Remand for Immediate Award of Benefits**

The ALJ erred in discrediting the opinions of Drs. Morgan, Genthe and Jenkins-Guarnieri. If these opinions are given proper weight, a finding that Plaintiff is disabled is mandated. In addition, the ALJ's credibility determination is not supported by substantial evidence in the record. If Plaintiff's testimony is properly credited, the Rules mandate that she be found disabled. As such, a remand for the immediate calculation and award of benefits is both appropriate and required.

Accordingly, **IT IS HEREBY ORDERED:**

1. Plaintiff's Motion for Summary Judgment, ECF No. 15, is **GRANTED.**

2. Defendant's Motion for Summary Judgment, ECF No. 16, is **DENIED.**

3. The decision of the Commissioner is **reversed** and **remanded** for an immediate calculation and award of benefits.

4. Judgment shall be entered in favor of Plaintiff and against Defendant.

**IT IS SO ORDERED.** The District Court Executive is hereby directed to file this Order, provide copies to counsel, and **close** the file.

**DATED** this 7th day of June 2022.



*Stanley A. Bastian*

Stanley A. Bastian  
Chief United States District Judge